



16731

June 25, 2002

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV01000095
[REDACTED]
Unnamed ([REDACTED])
\$900.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01000095, which includes your appeal as owner/operator of the unnamed fishing vessel ([REDACTED]). The appeal is from the action of the Hearing Officer in assessing a \$900.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.27(a)(1)	Failure to have vessel's number, as required by 173.15, painted on or permanently attached to each side of the forward half of the vessel.	\$100.00
33 USC 1602 (Rule 23)	Failure of power-driven vessel to exhibit appropriate lights underway.	\$800.00

The violations were first observed on December 12, 2000, when Coast Guard boarding officers boarded the fishing vessel [REDACTED] while it was underway in the Gulf of Mexico, approximately one-half nautical mile from Longboat Key.

On appeal, you deny the violation of 33 CFR 173.27(a)(1) and contend that the hull of your vessel is "black and the numbers are blue and they do contrast." You do not deny the alleged violation of 33 USC 1602 (Rule 23) but seek mitigation of the assessed penalty because it would be a "real hardship" for you to pay such a high penalty. You further contend that you are "legally disabled and eligible for disability...[but that you]...would rather work for a living." You add that you do not make a lot of money fishing and contend that what you do make is "just enough to get by." Your appeal is denied for the reasons described below.

June 25, 2002

I will begin by addressing your alleged violation of 33 CFR 173.27(a)(1). 33 CFR 173.27(a)(3) makes clear that the numbers displayed on a vessel must “[c]ontrast with the color of the background [of the vessel’s hull] and be distinctly visible and legible.” The Coast Guard boarding report for the night of the incident indicates that “[t]he vessel’s hull is dark navy gray with dark black numbers.” As a consequence, the boarding officers concluded that your vessel’s numbers did not contrast with the hull as required by Coast Guard regulation. The boarding report further indicates that you were issued a warning for the same discrepancy by the [REDACTED] on the evening of December 11, 2000, just hours before the Coast Guard boarded your vessel. I find this to be further validation of the Coast Guard’s conclusion that there was insufficient contrast between the numbers and the hull. In your letter dated March 9, 2001, you noted that your vessel’s hull is “black, not navy” and further asserted that your vessel’s numbers were “blue, outlined in yellow with a silver metallic background.” Based upon your letter of March 9, 2001, it appears the yellow outline was added following the boarding. While you admitted to being given a warning by the [REDACTED], you have submitted photos to support your assertion that the numbers do, in fact, contrast. I have examined the photographs you submitted in your appeal letter and find that even with the yellow outline, the contrast is insufficient. Therefore, I find the violation proved and will not mitigate the penalty.

I will now address the remaining violation. Because you do not deny that you operated your vessel without navigation lights, I consider the violation of 33 USC 1602 (Rule 23) proved. The only issue remaining is whether mitigation of the penalty is warranted. Under the circumstances of this case, I do not believe that it is. The case file indicates you were extremely uncooperative and intentionally impeded the boarding officer as he was performing a safety inspection of your vessel. While I note that you disagree with this characterization, the statements of both Coast Guard boarding officers indicate otherwise. This aggravating evidence does not suggest that a reduction of the assessed penalty is in order.

Although you contend that you are “legally disabled” and that the amount of the penalty assessed by the Hearing Officer would be “a real burden on...[your]...life,” you have not provided any documentary evidence to support your assertion. The record further indicates that you were boarded by the Coast Guard in the late evening hours of December 11, 2000. During that boarding, you were also seen operating your vessel without your navigation lights energized. I am confident, therefore, that you were aware of the Coast Guard’s requirements with respect to the operation of navigation lights and that you intentionally chose to ignore those requirements. In your letter dated March 9, 2001, you asserted that the mullet season is both extremely competitive and extremely short. You added that, due to the competitive nature of the season, it is often necessary to “slide away at night” so that you are able to get away from a group of fishermen and cast your net without interference. Although this may be the nature of mullet fishing, it does not allow you to ignore Coast Guard safety regulations. Because you were fully aware of the Coast Guard’s regulations and because you intentionally failed to obey those regulations, I will not mitigate the penalty assessed by the Hearing Officer.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations occurred and that you are the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$900.00 to be appropriate in light of the seriousness of the violations.

RE: CIVIL PENALTY

16731

June 25, 2002

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$900.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Should you still believe that you are financially unable to pay this penalty, you may request the establishment of a payment plan. Requests for relief should be directed to the Chief, Claims Branch, Maintenance and Logistics Command Pacific, Coast Guard Island, Alameda, California 94501-5100.

Sincerely,

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DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center